

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: KEURIG GREEN MOUNTAIN SINGLE-	:	No. 1:14-md-02542 (VSB)
SERVE COFFEE ANTITRUST LITIGATION	:	
	:	<u>Applies to:</u>
	:	<u>No. 14 Civ. 4242</u>
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DECLARATION OF S.P. KOTHARI, PH.D.
IN SUPPORT OF DEFENDANT KEURIG GREEN MOUNTAIN'S OPPOSITION
TO JBR'S MOTION FOR A PRELIMINARY INJUNCTION

I. Qualifications

1. I am the Gordon Y. Billard Professor of Management at the Sloan School of Management at the Massachusetts Institute of Technology (“MIT”). I am also currently Deputy Dean of MIT’s Sloan School of Management, with responsibility for Faculty and International Programs. I returned to MIT after serving as Global Head of Equity Research with Barclays Global Investors between 2008 and 2009. I served on the faculty of MIT between 1999 and 2008, first as Head of the Accounting Group, and then as Head of the Department of Economics, Finance, and Accounting. I served on the faculty of the University of Rochester between 1986 and 1999, first as an Assistant Professor, then as an Associate Professor, and finally as Professor and Accounting Area Coordinator. During this time, I also held visiting positions at MIT, the University of Technology in Sydney, Baruch College of the City University of New York, and the City University in London. I received my B.E. degree in Chemical Engineering from the Birla Institute of Technology and Science in 1979, my M.B.A. in Accounting and Finance from the Indian Institute of Management in 1982, and my Ph.D. in Accounting from the University of Iowa in 1986.

2. I have published numerous academic articles in the areas of accounting, finance, and economics, and co-edited two books titled *Financial Statement Analysis*, published by McGraw-Hill, and *Contemporary Accounting Research*, published by North-Holland Publishing. My research has primarily focused on accounting topics such as the relation between companies’ profitability and value, the effect of institutions on the properties of accounting numbers internationally, informational efficiency of stock prices, the relation between accounting accruals and cash flows, and corporate uses of financial derivatives,

among other topics. I am the editor of a book on the analysis of financial statements and I have taught MBA and PhD courses on various related topics, including corporate financial accounting, which deals with the link between companies' financial statements and their decisions and performance. I am currently an editor of the *Journal of Accounting & Economics*, a leading academic journal in the field of accounting, and have been an editor of this journal since 1997. I have also served as an associate editor for academic journals, including the *Journal of Accounting & Economics* and *The Accounting Review*, and as a peer reviewer for academic journals such as *The Journal of Finance*, the *Journal of Financial Economics*, the *Journal of Accounting Research*, *Contemporary Accounting Research*, and *The British Accounting Review*.

3. My publications appear on my curriculum vitae, attached as Exhibit 1. Exhibit 2 provides a list of expert testimony that I have provided over the last four years.

II. Retention and Summary of Opinions

4. I have been retained by counsel for the defendant to address the opinion of Dr. Gordon Rausser that the actions allegedly taken by Keurig Green Mountain, Inc. ("Keurig") will cause, absent the entry of a preliminary injunction, irreparable injury to JBR, Inc. ("JBR"). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Declaration of Gordon Rausser, Ph.D., August 11, 2014 ("Rausser Declaration"), ¶¶ 25, 106-107.

[REDACTED]

5. This declaration contains my current opinions in this matter. I reserve the right to supplement my opinions if additional relevant information becomes available.

6. The documents and information upon which I have relied are listed in Exhibit 3.

7. I am being compensated in this matter at my usual and customary rate of \$1,000 per hour. My compensation is not contingent in any way upon the substance of my opinions or the outcome of this litigation. The research staff at CRA – an economics, finance, and management consulting firm – has provided research assistance to me in this matter.

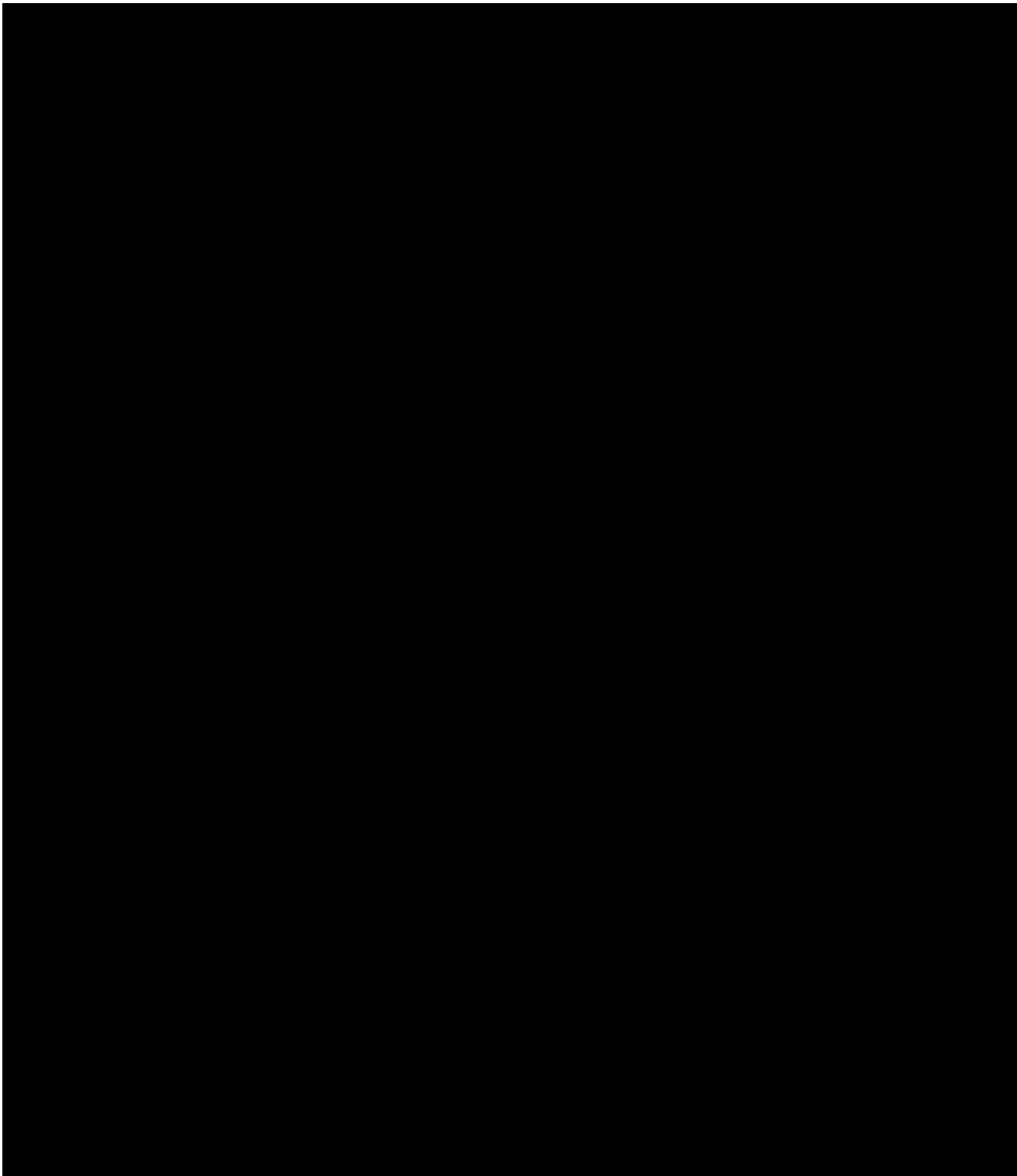
[REDACTED]

² Rausser Declaration, Section VII.

³ Rausser Declaration, ¶ 107.

⁴ Sarina Dep. 168:13-20.

⁵ Sarina Dep. 164:24-165:2.



⁶ Sarina Dep. 165:21-25.

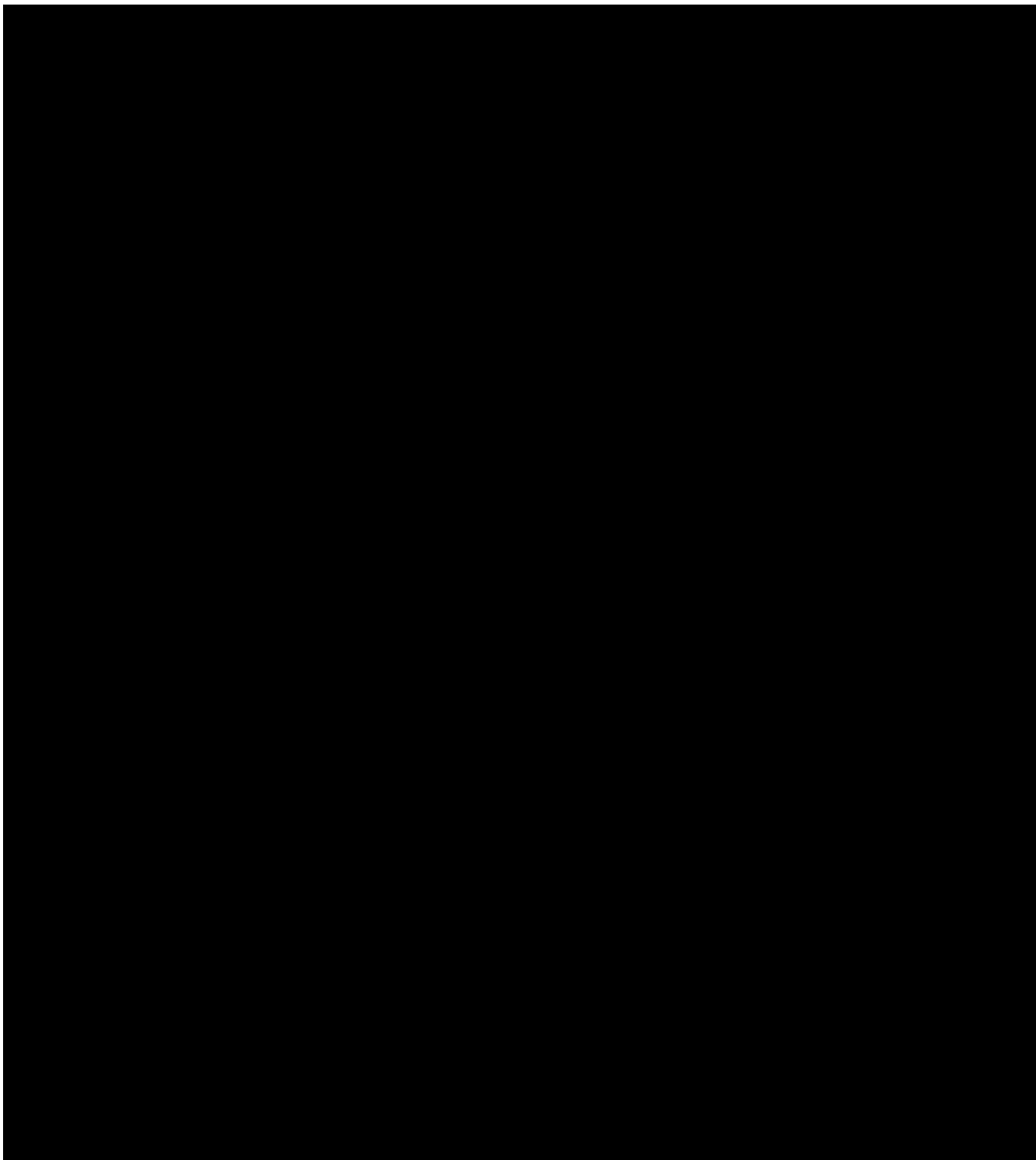
⁷ Sarina Dep. 166:19-167:24.

⁸ Declaration of Michael Sarina, August 11, 2014 (“Sarina Declaration”), ¶ 8.

⁹ Sarina Dep. 185:7-186:2.

¹⁰ JBRI00000185; Sarina Dep. 171:9-23, 176:9-15, 185:16-186:9. Because JBR’s CFO referenced a 38% decline in his declaration but produced backup that showed a 35.5% decline, I use 35.5% in my analysis.

¹¹ A 38% decline would imply fiscal year 2015 sales of \$50.3 million (31% less than in fiscal year 2014).



¹² With a 38% decline, JBR's sales for the remaining eight months would have to be \$21.9 million, also less than half of the sales in the same period in fiscal year 2014.

¹³ Sarina Dep. 135:14-17, 135:23-136:9.

¹⁴ Declaration of Kevin M. Murphy, August 29, 2014 ("Murphy Declaration"), Exhibit 6.

¹⁵ Murphy Declaration, Section VI.

¹⁶ JBRI00000179, slide 8.

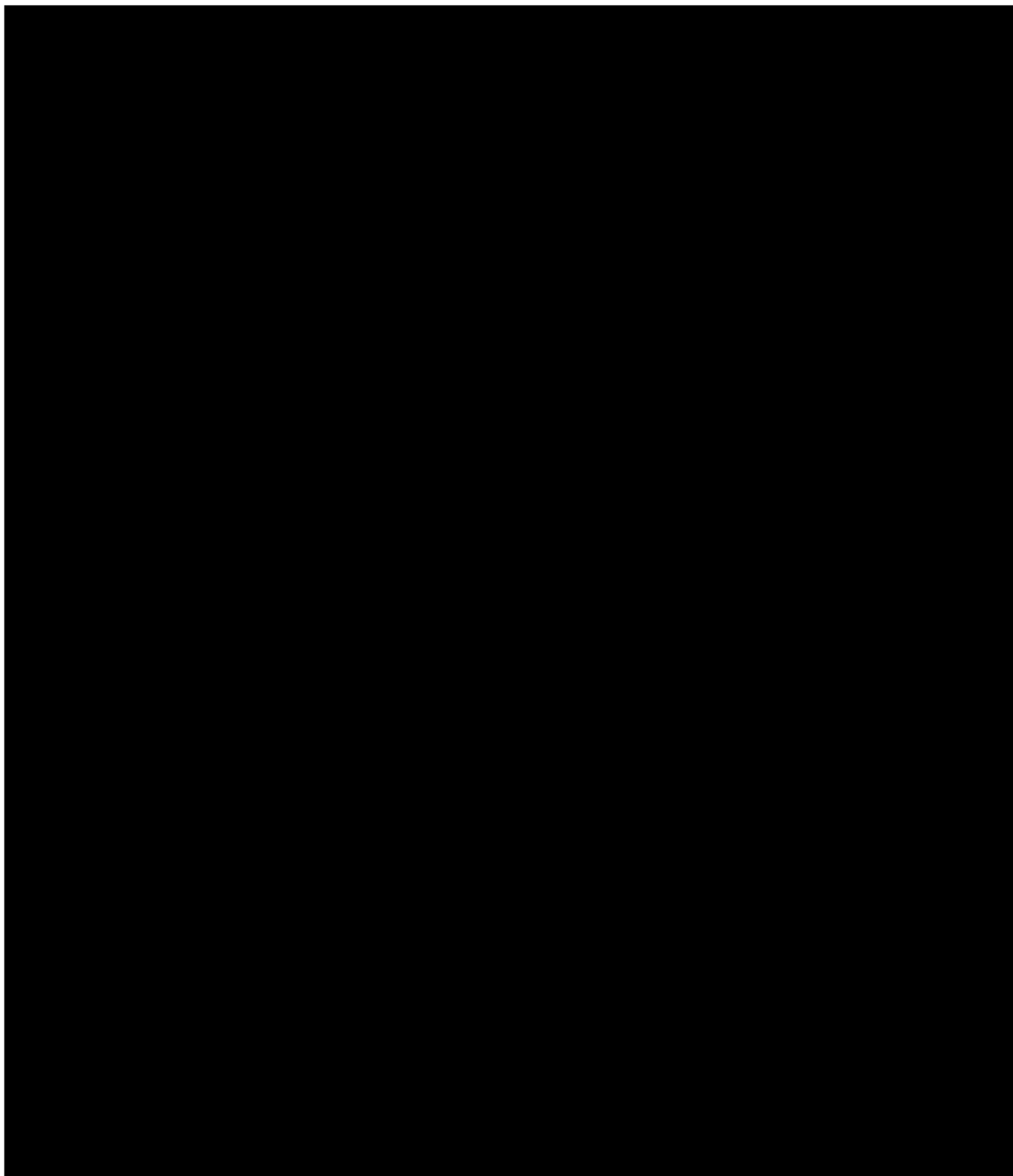
¹⁷ Sarina Dep. 74:9-76:10.

■ [REDACTED]
[REDACTED]
Notice of Motion and Motion for Preliminary Injunction, *JBR, Inc. v. Keurig Green Mountain, Inc.*, No. 2:14-cv-KJM-CKD (E.D.Cal. April 16, 2014), ECF No. 19. [REDACTED]

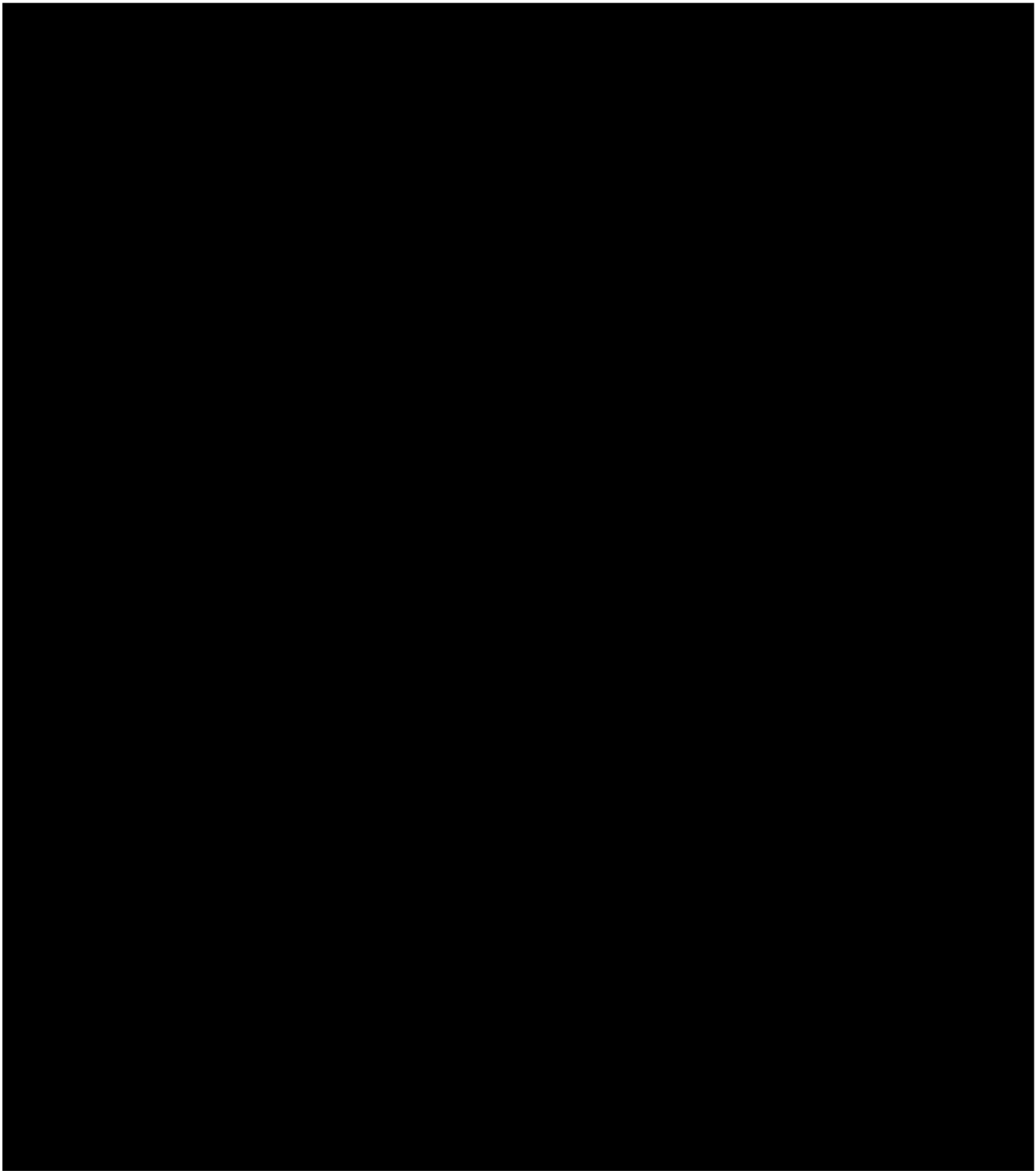
[REDACTED] Sarina Dep. 164:14-17.

²⁰ Sarina Declaration, ¶ 8; Rausser Declaration, ¶ 117.

²¹ Sarina Dep. 183:13-184:16.



2012 is the first fiscal year affected by the launch of OneCups. See, e.g., “San Francisco Bay OneCup™: The Best Value On The Single Serve Coffee Market With The Rich, Full-Bodied Taste You Look For,” *PRNewswire*, October 24, 2011.



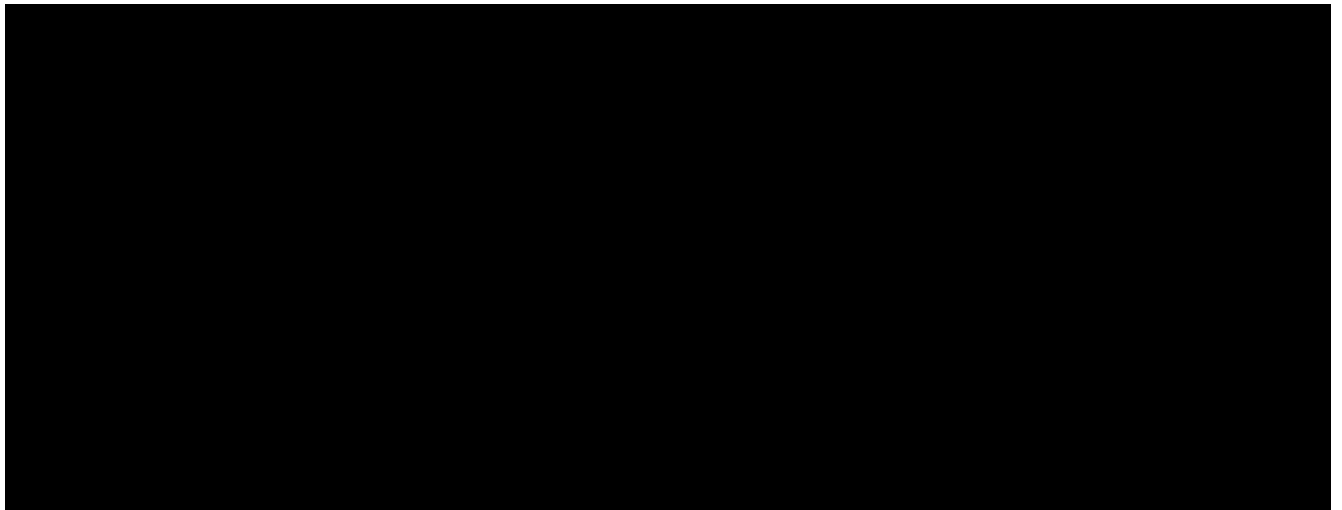
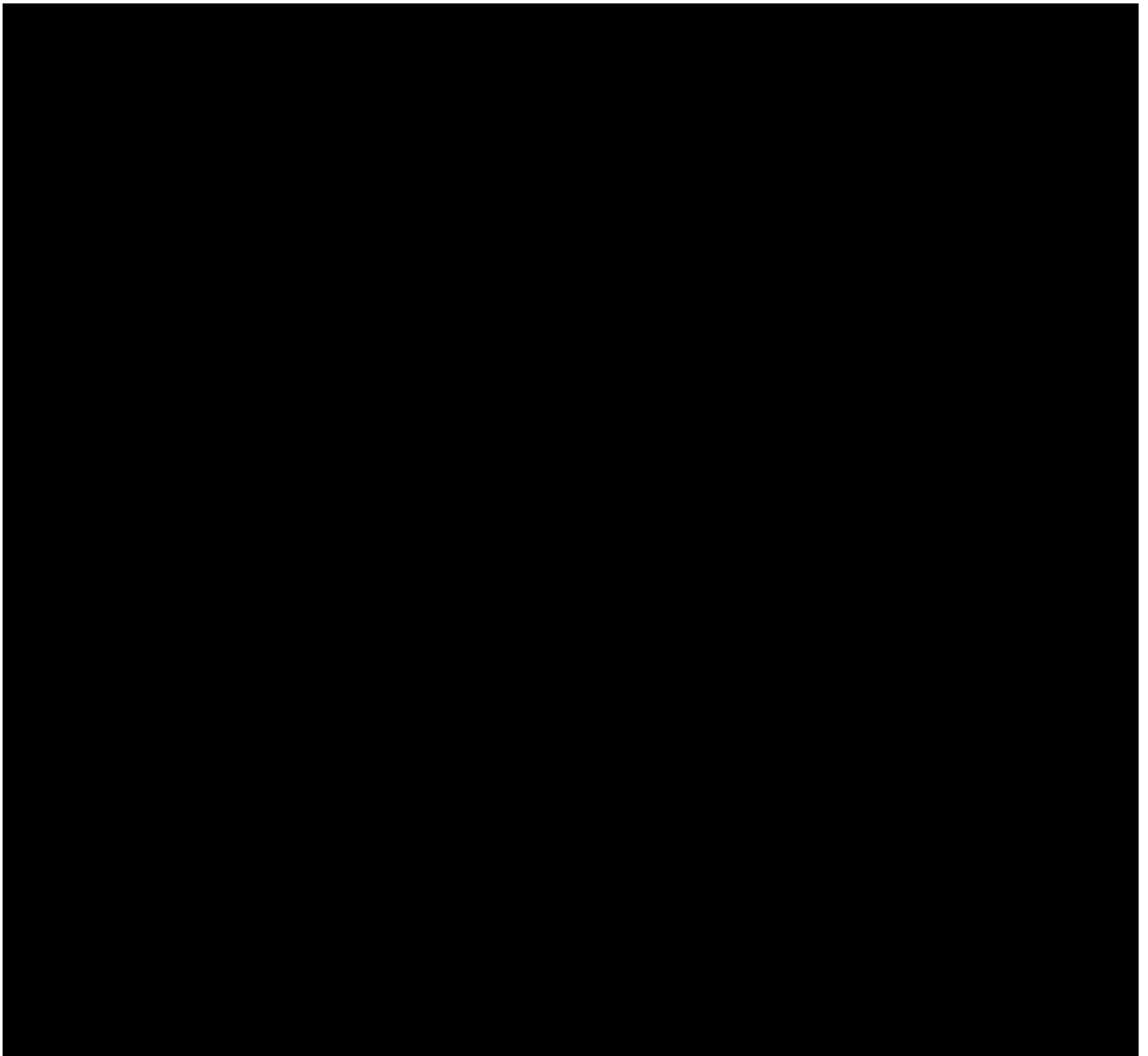
²⁴ JBRI00000185, [REDACTED]

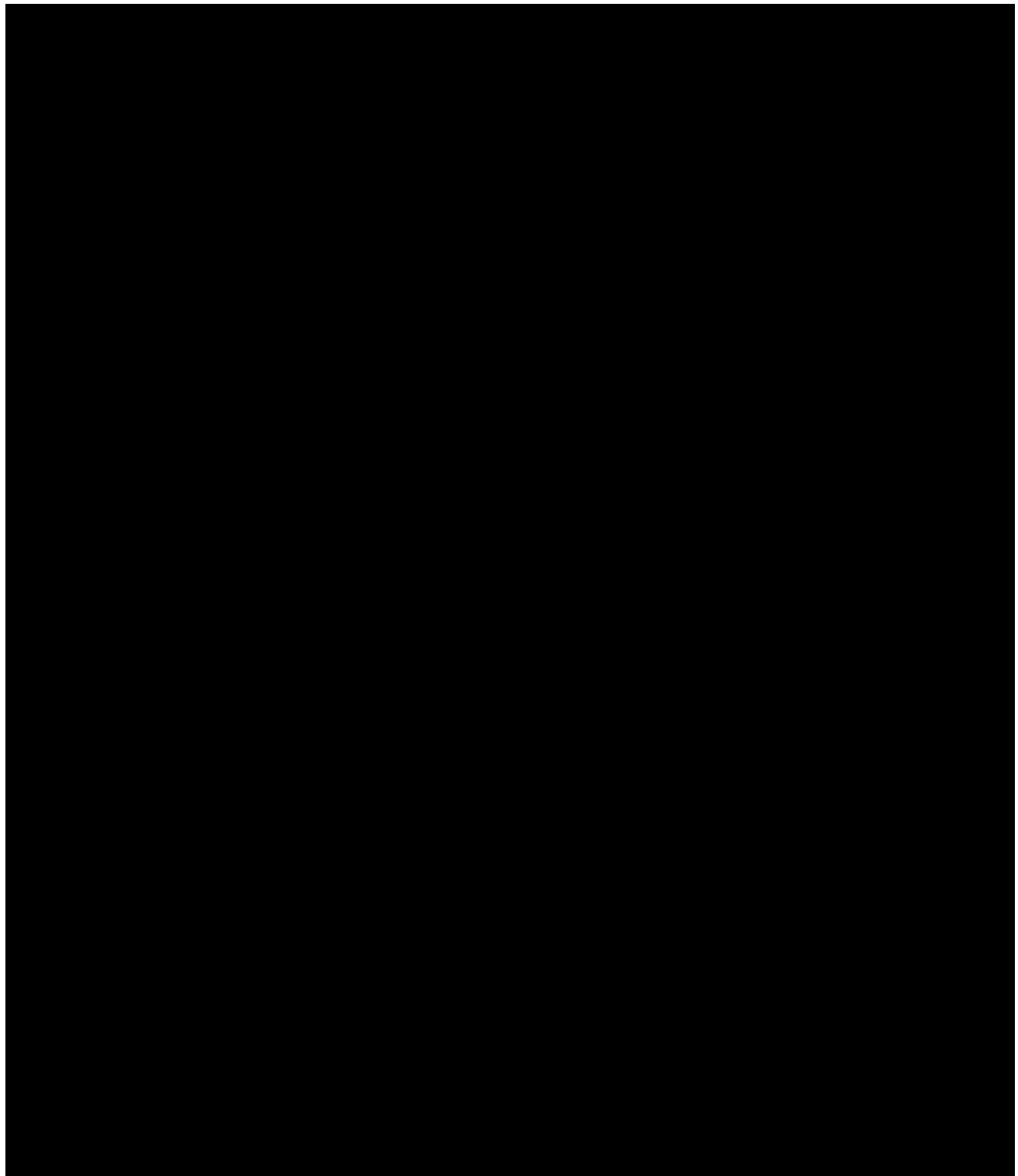
²⁵ Sarina Dep. 183:13-184:16.

²⁶ Sarina Dep. 184:3-9. [REDACTED]

²⁷ Sarina Dep. 179:6-12.





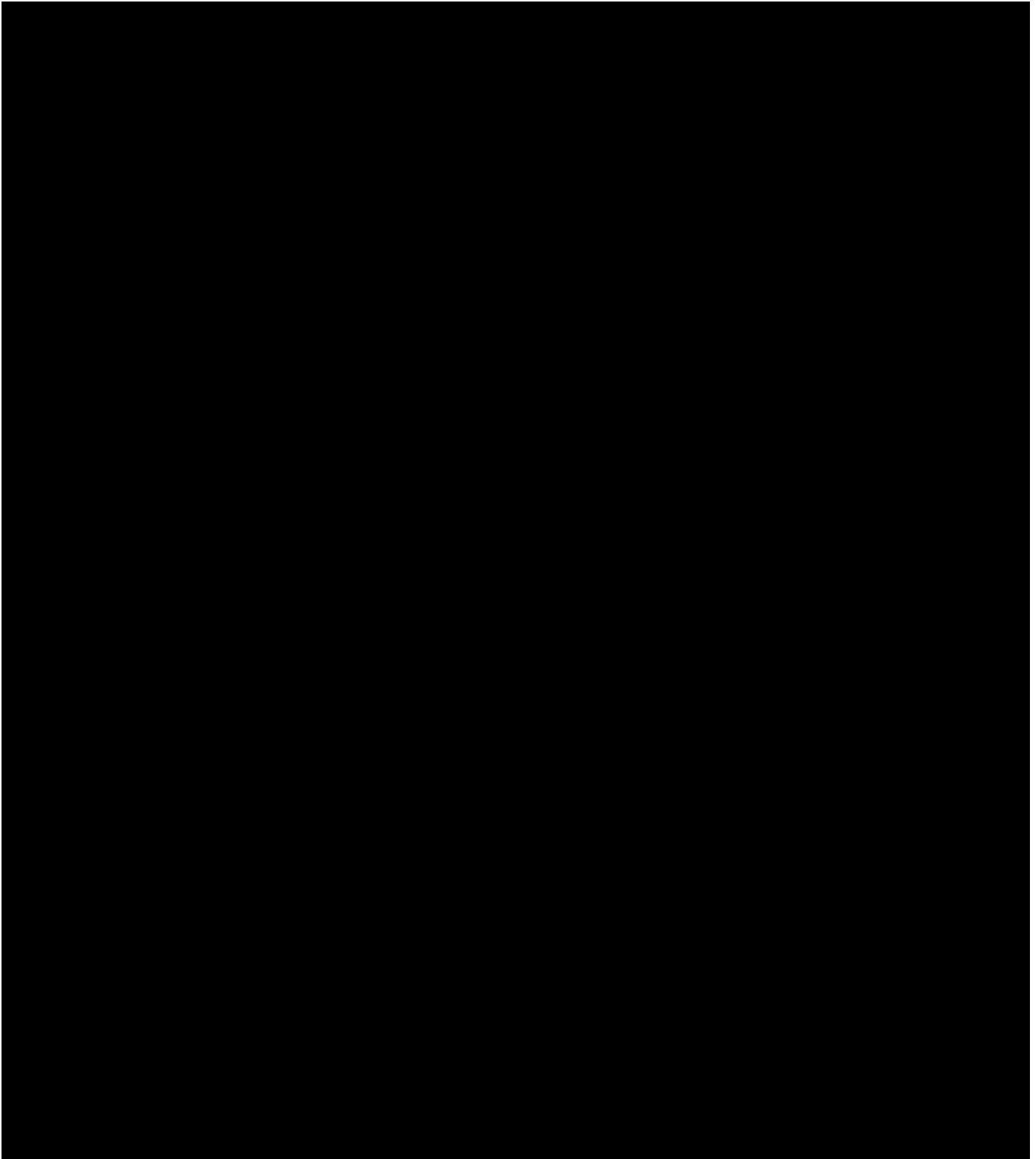


³⁵ JBRI00000185, [REDACTED]

³⁶ JBRI00000147-180 at 165; Sarina Dep. 169:16-19, 170:21-23.

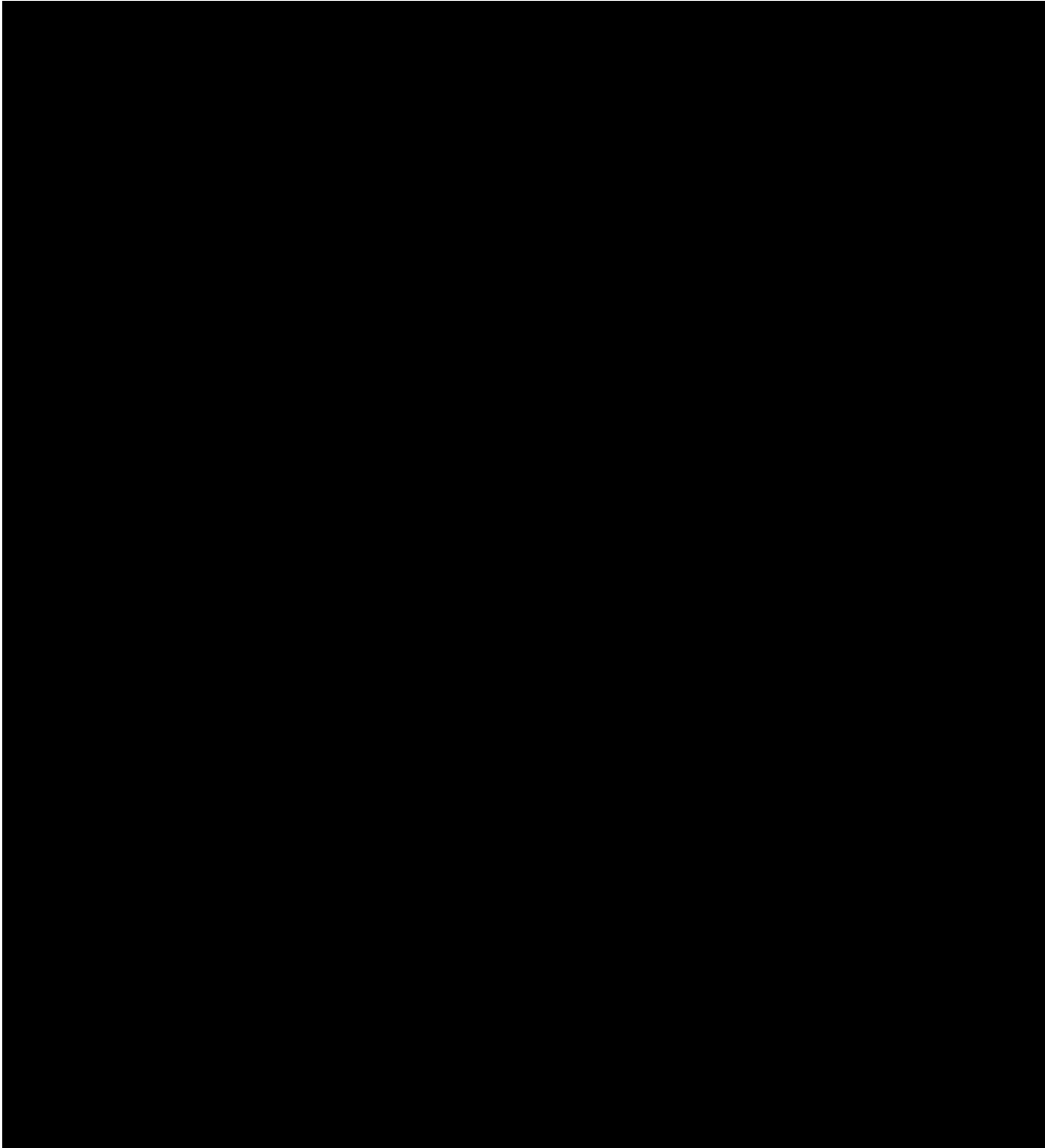
³⁷ Sarina Dep. 173:11-16.

³⁸ See, e.g., Dichev, I. and D. Skinner, 2002. "Large-sample evidence on the debt covenant hypothesis," *Journal of Accounting Research*, volume 40, number 4, pages 1091-1123.



³⁹ Rausser Declaration, ¶ 106.

⁴⁰ Rausser Declaration, ¶¶ 110-111.



⁴¹ Sullivan Dep. II, 452:17-21.

⁴² Sullivan Dep. II, 453:7-11.

⁴³ ELT Deck at 92.

⁴⁴ Manly Dep. II, 365:7-15.

⁴⁵ TreeHouse Foods, Inc. et al. v. Green Mountain Coffee Roasters, et al., No. 14 Civ. 905, Cplt. at ¶ 289 (“The average K-Cup Brewer owner...uses more than 1,000 K-Cups per year, according to estimates”).

⁴⁶ ELT Deck at 91.

⁴⁷ ELT Deck at 89.

See previous footnote.

Manly Dep. II, 361:25-362:8.

⁵⁰ See, e.g., Manly Dep. II, 364:20-365:4.

[REDACTED]

VII. Conclusion

[REDACTED]

⁵¹ In the event the Court were inclined to grant a preliminary injunction, Keurig has requested the opportunity to present supplemental briefing on the appropriate amount of the security that JBR would be required to post. It is my opinion that [REDACTED]

[REDACTED]

I declare under penalty of the perjury laws of the United States that the foregoing is true and correct. Executed on August 29, 2014.

A handwritten signature in black ink, appearing to read 'S.P. Kothari', written above a horizontal line.

S.P. Kothari, Ph.D.